



STATE OF NEW YORK

UNEMPLOYMENT INSURANCE APPEAL BOARD

PO Box 15126

Albany NY 12212-5126

DECISION OF THE BOARD

Mailed and Filed: FEBRUARY 21, 2023

IN THE MATTER OF:

Appeal Board No. 626991

PRESENT: JUNE F. O'NEILL, MEMBER

The Department of Labor issued the initial determination holding the claimant ineligible to receive benefits, effective July 10, 2022 through August 7, 2022, on the basis that the claimant did not comply with registration requirements. The claimant requested a hearing.

The Administrative Law Judge held a telephone conference hearing at which all parties were accorded a full opportunity to be heard and at which testimony was taken. There was an appearance by the claimant. By decision filed November 21, 2022 (), the Administrative Law Judge sustained the initial determination.

The claimant appealed the Judge's decision to the Appeal Board.

Based on the record and testimony in this case, the Board makes the following

FINDINGS OF FACT: The claimant was laid off from his job on June 30, 2022. Within the week after being laid off, the claimant accessed the Department of Labor website to look into what had to be done to file a claim for unemployment benefits. That website provided information about filing a claim including, "File your claim the first week that you lose your job," followed by a link for filing a claim online. Frequently Asked Questions (FAQs) also found on the Department website include, "What if I've lost my job, but I'm not sure if I will receive

dismissal/severance pay, or when I might receive it?"; and the answer, "You should file for benefits and let us determine your eligibility."

The claimant might have started the claim filing process in the weeks after his layoff, but he did not complete the application for benefits because he was waiting for information from his former employer regarding severance pay, vacation pay, and bonus pay. The claimant filed a claim for unemployment benefits on August 8, 2022; his claim was made effective that same day. The claimant did not complete an application for unemployment benefits sooner because he had not received complete information about payments from his former employer, and did not feel he had the correct information to be able to file a claim.

OPINION: Pursuant to the statute and the regulations of the Commissioner of Labor, a claimant is not considered eligible to receive benefits until a claim has been properly filed, and the failure to file a claim may be excused only upon a showing of good cause. (Labor Law §§ 590, 596; 12 NYCRR § 473 [1]).

Good cause for a delay in filing a claim has been found to exist when a claimant's delay is the result of misinformation received from his former employer regarding the status of his employment, or the result of misinformation received from a Department of Labor representative. The claimant has not alleged, or established, either of these reasons, or any other explanation for his delay in filing that amounts to good cause.

The evidence establishes that the claimant failed to file an original claim for benefits (register), until August 8, 2022. The claimant testified that he waited to file his claim because he was unsure about the receipt or amount of pay he was due from his former employer upon being laid off. The evidence does not establish that the claimant's former employer misled or misinformed him about the status of his employment between June 30, 2022 and August 8, 2022 when he filed his claim.

The evidence also fails to establish that the claimant delayed in filing his claim because he received misinformation from the Department of Labor. Although the claimant contends he called the Department weekly beginning the week after he was laid off, he also contends that he never got through to speak with anyone, testimony that is supported by the Call History Report received into evidence. However, information available to the claimant on the Department's website, which the claimant had accessed, plainly advised the claimant to file a claim the first week of his unemployment. Significantly, the claimant did not assert at the hearing that he was unable to file a claim

and needed the assistance of a Department representative to do so; the claimant had access to the website and could have filed a claim at any point after his employment ended.

Since the claimant's delay in filing was because he was waiting to get information regarding separation pay from the employer, a reason that does not constitute good cause, he is not eligible to receive unemployment benefits for the period prior to August 8, 2022.

DECISION: The decision of the Administrative Law Judge is affirmed.

The initial determination, holding the claimant ineligible to receive benefits, effective July 10, 2022 through August 7, 2022, on the basis that the claimant did not comply with registration requirements, is sustained.

The claimant is denied benefits with respect to the issues decided herein.

JUNE F. O'NEILL, MEMBER